

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PATRICIA E. SLATTERY, and
MICHAEL B. SLATTERY,
Plaintiffs,

v.

CIVIL ACTION NO. 04-30209-MAP

RICHARD HOWSE, TRAVELERS
TRANSPORTATION SERVICE, INC., and
KINGSWAY GENERAL INSURANCE
COMPANY,
Defendants

**ANSWER AND JURY DEMAND OF
DEFENDANT, RICHARD HOWSE**

PARTIES

1. The defendant lacks sufficient information to either admits or denies the allegations contained in paragraph 1 of the Complaint.
2. The defendant denies the allegations contained in paragraph 2 of the Complaint.
3. The defendant admits the allegations contained in paragraph 3 of the Complaint.
4. The defendant admits the allegations contained in paragraph 4 of the Complaint.

FACTS

5. The defendant admits the allegations contained in paragraph 5 of the Complaint.
6. The defendant denies the allegations contained in paragraph 6 of the Complaint.
7. The defendant lacks sufficient information to either admits or denies the allegations contained in paragraph 7 of the Complaint.
8. The defendant admits the allegations contained in paragraph 8 of the Complaint.
9. The defendant admits the allegations contained in paragraph 9 of the Complaint.
10. The defendant denies the allegations contained in paragraph 10 of the Complaint.

11. The defendant denies the allegations contained in paragraph 11 of the Complaint.
12. The defendant admits that the plaintiffs sent a purported demand letter to the defendant, Kingsway General Insurance Company, on or about May 7, 2004. The defendant denies the remaining allegations contained in paragraph 12 of the Complaint.
13. The defendant admits that the defendant, Kingsway General Insurance Company did not make a settlement offer in response to the purported demand letter. The defendant denies the remaining allegations contained in paragraph 13 of the Complaint.
14. The defendant denies the allegations contained in paragraph 14 of the Complaint.
15. The defendant denies the allegations contained in paragraph 15 of the Complaint.
16. The defendant denies the allegations contained in paragraph 16 of the Complaint.
17. The defendant denies the allegations contained in paragraph 17 of the Complaint.

COUNT I

18. The defendant repeat and incorporate by reference herein, his answers to the preceding paragraphs of the Complaint.
19. The defendant denies the allegations contained in paragraph 19 of the Complaint.
20. The defendant denies the allegations contained in paragraph 20 of the Complaint.

COUNT II

21. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.
22. The defendant denies the allegations contained in paragraph 22 of the Complaint.
23. The defendant denies the allegations contained in paragraph 23 of the Complaint.

COUNT III

24. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.

25. The defendant denies the allegations contained in paragraph 25 of the Complaint.

26. The defendant denies the allegations contained in paragraph 26 of the Complaint.

COUNT IV

27. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.

28. The defendant denies the allegations contained in paragraph 28 of the Complaint.

29. The defendant denies the allegations contained in paragraph 29 of the Complaint.

COUNT V

30. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.

31. The defendant denies the allegations contained in paragraph 31 of the Complaint.

32. The defendant denies the allegations contained in paragraph 32 of the Complaint.

COUNT VI

33. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.

34. The defendant denies the allegations contained in paragraph 34 of the Complaint.

35. The defendant denies the allegations contained in paragraph 35 of the Complaint.

COUNT VII

36. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.

COUNT VIII

37. The defendant repeats and incorporates by reference herein, his answers to the preceding paragraphs of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

And further answering, the defendant states that the plaintiff was negligent and that the negligence of the plaintiff equaled or exceeded any negligence of the defendants, and therefore the plaintiffs may not recover.

SECOND AFFIRMATIVE DEFENSE

And further answering, the defendant states that if the plaintiffs were injured, which the defendant denies, said injuries were caused by a party or parties over whom the defendant had no control.

THIRD AFFIRMATIVE DEFENSE

And further answering, the defendant states that if the plaintiffs were injured, which the defendant denies, said injuries were caused by a party or parties for whom the defendant has no legal responsibility.

FOURTH AFFIRMATIVE DEFENSE

And further answering, the defendant denies that he is liable or indebted to the plaintiffs in any way or manner.

FIFTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that he is exempt from liability to the plaintiff under the provisions of Massachusetts General Laws, Chapter 90, Section 34M.

SIXTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that the plaintiff is not entitled to recover damages for pain and suffering under Massachusetts General Laws, Chapter 231, Section 6D(1-5).

SEVENTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that the Complaint fails to state a claim for which relief may be granted.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that the plaintiff's negligence was greater than the alleged negligence of the defendant, and that such negligence of the plaintiff contributed to the plaintiff's alleged injuries and, therefore, the plaintiff is barred from recovery under M.G.L.c.231, § 85. In the alternative, the plaintiff's recovery, if any, must be diminished in accordance with M.G.L. c. 231, § 85 by the proportion of negligence, which is attributable to the plaintiff.

NINTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that his conduct was not the proximate cause of any damage allegedly sustained by the plaintiffs.

TENTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that the plaintiffs failed to mitigate their damages and are therefore barred from recovery.

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, to the extent that the plaintiffs suffered any damages it was a result of a superseding and or intervening cause for which the defendant is not responsible.

WHEREFORE, the defendant demands that judgment enter in his favor and against the plaintiffs, with costs and attorney's fees.

JURY DEMAND

THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL ISSUES.

RICHARD HOWSE,

By his attorneys,

/s/ Christopher P. Flanagan
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Christopher P. Flanagan, BBO# 567075
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Dated: March 2